

**IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
WEST VIRGINIA, AT MARTINSBURG**

DALE BERNARD BEARD, JR.,

Plaintiff,

v.

**CIVIL ACTION NO.: 3:23-CV-193
HONORABLE GINA GROH**

**DANIEL E. SMITH, individually, and
ADAM ALBAUGH, individually,**

Defendants.

DEFENDANTS' DISCLOSURE OF EXPERT WITNESSES

NOW COME the Defendants, Daniel E. Smith and Adam Albaugh, by counsel, Keith C. Gamble, and the law firm of Pullin, Fowler, Flanagan, Brown & Poe, PLLC, pursuant to the Court's Scheduling Order hereby makes the following Disclosure of Expert Witnesses:

1. Samuel D. Faulkner
8865 Davisson Road
Mechanicsburg, OH 43044
Telephone: (937) 834-7002
Facsimile: (837) 215-6377

Pursuant to Rule 26(a)(2)(B)(iv), a copy of Mr. Faulkner's Curriculum Vitae, setting forth his qualifications, is attached hereto as "Exhibit A." Further, a copy of Mr. Faulkner's report, dated September 30, 2024, is attached hereto as "Exhibit B." This written report contains a statement of Mr. Faulkner's opinions in this case, and the facts and data considered by him in forming those opinions, pursuant to Rule 26(a)(2)(B)(i) and (ii) of the Federal Rules of Civil Procedure, based on the discovery completed to date. Defendants reserve the right to supplement this disclosure, pursuant to Rules 26(a)(2)(D) and Rule 26(e) of the Federal Rules of Civil Procedure, with any additional opinions of Mr. Faulkner, including any additional opinions to rebut any alternate theories

Exhibit G

which may be offered by Plaintiff's expert, if any. Further, as required by Rule 26(a)(2)(B)(v), a copy of Mr. Faulkner's listing of trial and/or deposition testimony is attached hereto as "Exhibit C."

Finally, pursuant to Rule 26(a)(2)(B)(vi).

2. Katherine B. Harding, Esq.
Berkeley County Prosecuting Attorney's Office
380 W. South Street # 2400
Martinsburg, WV 25401

Katherine Harding is an Assistant Prosecuting Attorney with the Berkeley County Prosecuting Attorney's office in Martinsburg, West Virginia. Mrs. Harding's Personal Resume is attached hereto as "Exhibit D". Mrs. Harding has not been specially retained or employed by these Defendants to give expert testimony and this disclosure is made consistent with Local Rule Civ. P. 26.01 of the Northern District of West Virginia with regard to experts.

Based upon her experience, training, direct knowledge of facts, and information reviewed, as well as her role as the Assistant Prosecuting Attorney assigned to handle the underlying criminal matters, Mrs. Harding will offer opinions with regard to the actions of the Defendants, the criminal charges filed, the substances tested, and dismissal of charges with regard to Plaintiff's arrest underlying his claims in this matter. Specifically, Mrs. Harding was the prosecutor responsible for the handling of the initial criminal charges, and investigation, associated with Plaintiff's arrest. As part of her role in handling such matters for Berkeley County Prosecuting Attorney's Office, she reviewed the body camera videos of the Defendant officers on scene in this matter. In her opinion, based upon the information at the Defendants disposal, the charges levied against Plaintiff were proper. She would opine that, despite the white powdered substance in Plaintiff's possession testing "inconclusive," that does not substantiate not charging the Plaintiff. As part of her basis for that opinion she will note, the crushed powdered substance tested "negative" for being a fake narcotic.

Further, she will note the substance was in an unmarked bottle and appeared to be crushed or powdered, consistent with illegal controlled substances. Additionally, in her opinion, the K9 alert further supported the Defendants' beliefs and predicate for the arrest and searching of the vehicle in question. Mrs. Harding will also opine that once it was determined by scientific testing, the substances found in Plaintiff's possession were not chargeable felony offenses, she dismissed the felony charges and moved to remand the underlying misdemeanor charges for prosecution in Magistrate Court. In her opinion, and consistent with testimony she would offer at trial of this matter, the charge of obstruction filed against Mr. Beard was valid based on the circumstances, testimony, and events she observed on the body camera. It is her opinion that Mr. Beard was lawfully ordered from the vehicle and Mr. Beard refused verbally and passively to exit. In her opinion, Mr. Beard's actions on the day in question met the predicate for a chargeable offense of obstruction and that probable cause existed for Mr. Beard to be arrested for the same. She will opine that the charges against Mr. Beard were dismissed in Magistrate Court not on their merits, but in the interest of judicial economy as Mr. Beard had been on bond for an extensive period of time without further incident and any conviction for the same would not have netted any additional effect beyond a fine and/or probation. She will opine bringing the charges at issue was not malicious on the part of the Defendants in this matter, in her opinion.

3. Defendants reserve the right to call any experts disclosed and/or utilized by any other party in this matter; if disclosed.

4. Defendants reserve the right to supplement this disclosure of expert witnesses if discovery proceeds in this matter.

Dated this 30th day of September, 2024.

**Defendants, Daniel E. Smith
and Adam Albaugh,
By Counsel:**

/s/ Keith C. Gamble

Keith C. Gamble, WV State Bar No. 7971

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CERTIFICATE OF SERVICE

The undersigned, counsel of record for Defendant, does hereby certify on this 30th day of September, 2024, that a true copy of the foregoing “**DEFENDANTS’ EXPERT WITNESS DISCLOSURE**” was filed and served via the CM/ECF filing system, as follows:

John H. Bryan, Esquire
Law Office of John H. Bryan
411 Main St.
P.O. Box 366
Union, WV 24983

/s/ Keith C. Gamble
Keith C. Gamble, WV State Bar No. 7971

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